

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

) Gen. Docket No. 90-314  
) RM-7140, RM-7175, RM-7618  
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REPLY OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

Bell Atlantic Personal Communications, Inc., on behalf of the Bell Atlantic Companies<sup>1/</sup> ("Bell Atlantic"), pursuant to Section 1.106 of the Commission's Rules, hereby replies to certain oppositions to its Petition for Reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.<sup>2/</sup> Bell Atlantic has already responded to several key issues raised on reconsideration by other parties in its Opposition filed on December 30, 1993, and will not raise again all of the arguments and issues made and addressed therein.

I. THE COMMISSION SHOULD ADOPT A REVISED PCS CHANNEL PLAN FEATURING SIX 20 MHz BLOCKS

Bell Atlantic's Petition for Reconsideration and attachments provided detailed discussion of why the Commission's current fragmented PCS channelization plan is neither technically

<sup>1/</sup> This Reply is submitted by the Bell Atlantic telephone companies -- the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and the New Jersey Bell telephone Company -- as well as Bell Atlantic Mobile Systems, Inc., Bell Atlantic Paging, Inc., and Bell Atlantic Personal Communications, Inc.

<sup>2/</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, Gen. Docket No. 90-314, FCC 93-451, 8 FCC Rcd. 7700 (Sept. 23, 1993) ("PCS Order").

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nor economically efficient, especially when compared to an allocation regime featuring six 20 MHz blocks.<sup>3/</sup> Supported by the analyses and opinions of Dr. Charles Jackson, Professor Raymond Pickholtz and Professor Jerry Hausman, Bell Atlantic has shown that the Commission's "gerrymandered" spectrum plan -- consisting of two 30 MHz MTAs, and one 20 MHz and four 10 MHz BTAs -- will have disastrous consequences for the rapid and efficient development of PCS if it is affirmed.<sup>4/</sup>

In response to Commissioner Barrett's strongly expressed belief that the "extensive record in this proceeding supports a better solution" than that adopted in the PCS Order, Bell Atlantic has proposed one that makes both technical and economic sense. A regime of six 20 MHz blocks will assure a fully competitive PCS market, and will provide much greater technical and economic efficiency than the FCC's channel plan, thereby resulting in efficient use of the spectrum and lower costs to PCS providers. It will also facilitate much more efficient and economic consolidations of PCS spectrum blocks -- both in the upcoming PCS auctions and among providers in the aftermarket -- should such aggregation prove necessary or desirable. And by providing for numerous strong competitors, it will eliminate any possible need for PCS eligibility restrictions, allowing cellular operators and cellular-affiliated LECs to bring their tremendous resources and expertise to bear in the emerging PCS marketplace.

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<sup>3/</sup> In his Dissenting Statement to the PCS Order, Commissioner Barrett observed that the Commission's unfortunate attempt to "make everyone happy" has yielded "a consensus decision that involves a complicated labyrinth of a few large allocations and numerous small market allocations, in varying size spectrum blocks." PCS Order, Dissenting Statement of Commissioner Barrett at 1. Bell Atlantic emphatically agrees with this assessment.

<sup>4/</sup> Contrary to the mischaracterization of PCS Action, which claims that Bell Atlantic has advocated the use of only BTAs as service areas, see Opposition of PCS Action, Inc. to Petitions for Reconsideration (Jan. 3, 1994), at 10 n.21, Bell Atlantic has not advocated a specific revision of the MTA/BTA geographic service area breakdown in connection with its six-block proposal. See Bell Atlantic Petition at 11 n.24 (Commission "could create a regime of 2 20 MHz MTAs and 4 20 MHz BTAs, for example, or one that features 3 MTAs and 3 BTAs").

No party on reconsideration has adequately defended the obvious deficiencies attending the Commission's PCS channelization plan, and numerous parties have expressed support for a six 20 MHz-block allocation regime as Bell Atlantic has proposed.<sup>5/</sup> On the other hand, American Personal Communications, for example, attempts colorfully to characterize Bell Atlantic's proposed six-block plan as a "minimalist position[] intended to cripple PCS," with "Goliath seek[ing] to ban slingshots." APC's position, however, seems little more than rhetorical cover for its recently-confirmed pioneer's preference, a decision which, if upheld, will guarantee APC a 30 MHz PCS license for the Washington, D.C. MTA if the current PCS allocation regime is not revised.<sup>6/</sup>

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<sup>5/</sup> BellSouth notes that the creation six uniform allocations of 20 MHz will "maximize the opportunity for open entry" and give "everyone the opportunity to compete equally." Petition for Reconsideration of BellSouth (Dec. 8, 1993), at 17-18. Sprint observes that "a viable full-service PCS offering may be made with as little as 20 MHz of spectrum," agrees that the proposal by Bell Atlantic "has merit," and consequently urges that "the six 20 MHz license format is the one that should be adopted." Opposition to Petitions for Reconsideration of Sprint Corporation (Dec. 30, 1993), at 4-5. Point Communications Company observes that the Commission's current channel plan "has no basis in science or the marketplace" and is "irrational and anticompetitive." Point notes that the simple "cure" for the deficiencies in the FCC's current allocation scheme is to create "no artificial distinctions among the various spectrum blocks," and instead to allocate four 20 MHz blocks in the lower band and two 20 MHz blocks in the upper band. Petition for Reconsideration of Point Communications Company (Dec. 8, 1993), at 1-3. Similarly, TDS "agrees with the analysis of Bell Atlantic that the six 20 MHz plan would be easy to implement and is technically, economically, and competitively superior to the Commission's current plan." Comments of Telephone and Data Systems, Inc. (Dec. 3, 1993), at 14; see also Petition for Reconsideration of TDS (Dec. 8, 1993), at 2-3 n.2. (observing that the "record in this proceeding demonstrates that PCS can be readily implemented with 20 MHz blocks (with spectrum aggregation options available to 40 MHz to address needs of bidders for whom 20 MHz blocks are deemed inadequate)," and that the adoption of uniform 20 MHz channel block sizes will "avoid the intuitive unfairness of assignment of 30 MHz blocks only in MTA areas and of 10 MHz 'slivers' only in the upper PCS band"). Cf. also Consolidated Response of George E. Murray to Petitions for Reconsideration and Clarification (Dec. 29, 1993) at 3-4 (current allocation "does not address the technical problems associated with aggregating spectrum across the lower and upper bands"); Opposition of Nynex at 2 (agreeing with Bell Atlantic that "some fine-tuning of the Commission's allocation plan is required to avoid potential impediments to the development of all PCS spectrum blocks").

<sup>6/</sup> See "PCS Pioneer's Preferences Granted to APC, Cox, and Omnipoint (Gen. Docket 90-314)," Report No. DC-2553 (Dec. 23, 1993). The PCS pioneer's preferences still must withstand petitions for reconsideration and/or appeal to the courts.

The weakness of APC's position on reconsideration is obvious from the arguments made in its own filing, which attempts to justify the two large 30 MHz allocations that the FCC has created for each MTA service region, but conveniently ignores the rest of the spectrum allocated for licensed PCS (fully half of the overall allocation for licensed services). If APC truly believed, for example, that 30 MHz were necessary to offer the "big-vision" PCS that the American public demands, it would have addressed the negative consequences of the Commission's creation of no less than five other potential PCS licenses consisting of smaller allocations -- including four 10 MHz blocks. If APC truly cared about engineering "facts," it would have addressed the fact that standalone spectrum allocations of 10 MHz according to APC's own reasoning will not support and economic or efficient PCS businesses, or the fact that consolidations across the upper and lower PCS bands will be difficult and more expensive.<sup>7/</sup> With its 30 MHz MTA license guaranteed, however, APC has little incentive to encourage the fortunes of other PCS competitors or to create a healthy PCS landscape.

The engineering realities of PCS spectrum allocation, as Bell Atlantic has repeatedly shown, and which have never been persuasively rebutted by any other party, are that 20 MHz blocks will allow multiple PCS competitors in most major markets to offer vibrant PCS services.<sup>8/</sup> If APC

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<sup>7/</sup> Even APC's sometime alter ego, PCS Action, admits that dual-band equipment will be slow to develop and expensive to produce, and consequently observes that aggregation under the Commission's current plan "needlessly complicates the development of PCS, and, by delaying its implementation, jeopardizes the success of PCS as well." PCS Action Inc.'s Petition for Reconsideration and Clarification (Dec. 8, 1993), at 2-3; see id. at 5-9.

<sup>8/</sup> The PCS Order itself found in the record "substantial support for a plan that would provide either four or five licensees, with 20 MHz or 25 MHz per licensee. The parties supporting this approach submit that we should provide for as many competitors as possible and that 20 MHz is sufficient for viable PCS operation." PCS Order at 19-20, ¶ 39. Bell Atlantic has submitted to and supplemented the record with much evidence to show that 20 MHz allocations would in fact permit the creation of multiple PCS competitors, while also providing enough spectrum for ample PCS operation. See, e.g., Comments of Bell Atlantic Personal Communications, Inc. (November 9, 1992), Attachment C, Technical Supplement of Dr. Charles L. Jackson, "Technical Considerations Regarding the 'Size' of PCS Licenses." This includes even the major markets that are most crowded with microwave incumbents. See Charles L. Jackson and Raymond L. Pickholtz, "Sharing Spectrum Between PCS and Microwave Systems" (August 24, 1993) ("white

is correct that more spectrum may be needed for PCS provision in a few major urban markets where it asserts that even 30 MHz is not enough, APC does not and cannot adequately explain why it would have the Commission adopt an unwieldy stopgap proposal to allow subdivision or leasing of other spectrum in the lower band for purposes of aggregating PCS spectrum<sup>9/</sup> -- which would be complicated to administer and would further balkanize the 10 MHz allocations in the upper band -- rather than offer a better channel plan. The simpler, more efficient and logical solution is to license uniform 20 MHz blocks, which promote easy and efficient consolidations, and then allow the auctions or the aftermarket to cure demand for more spectrum in particular markets where sharing with microwave incumbents may pose a problem.<sup>10/</sup>

It is obvious that technical and economic efficiency gains for PCS systems grow with the size of the individual spectrum allocations. Bell Atlantic has shown, however, that by sacrificing a relatively small efficiency gain in moving from 30 MHz to 20 MHz block allocations, a regime of

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paper" demonstrating 20 MHz allocations will provide ample spectrum for PCS operation); Comsearch, "Analysis of a 20 MHz PCS Spectrum Allocation for Detroit" (August 24, 1993) (concluding that PCS allocation of 20 MHz can permit deployment of a PCS system even in a major market crowded with incumbents).

<sup>9/</sup> See PCS Action Inc.'s Petition for Reconsideration and Clarification (Dec. 8, 1993), at 10.

<sup>10/</sup> APC claims that this point "ignores (but is motivated by) the delay, inefficiency, cost, and uncertainty that a wholesale reliance on aggregating spectrum blocks would impose." APC Opposition to Petitions for Reconsideration at 14. This conclusory dismissal, however, is difficult to fathom. 20 MHz of spectrum will in the vast majority of PCS markets support a dynamic and robust PCS service, such that there would hardly be "wholesale reliance" on spectrum aggregation or consolidation to support the rollout of PCS, and in fact, quite the opposite could be true -- in many markets, 30 MHz could itself be a wasteful initial allocation vis-a-vis a 20 MHz block. Moreover, even accepting APC's premise that some very large urban markets may require more spectrum whether the allocation is 20 MHz or 30 MHz, consolidation of licenses will occur virtually instantaneously through the auction process. There thus will be no additional "delay" or "cost" to consolidation to the forty MHz spectrum cap in the PCS auction. Furthermore, under a plan of six 20 MHz blocks, even in a worst case where a licensee in a major market were outbid for an additional PCS license, only one aftermarket transaction would be required to reach the 40 MHz aggregation limit specified in the PCS rules, which could be accomplished at least as quickly as any "spectrum leasing" arrangement.

six uniform 20 MHz allocations can be created that will allow for the creation of multiple strong PCS competitors, not just two.<sup>11/</sup>

## II. THE COMMISSION SHOULD ELIMINATE THE RESTRICTIONS ON CELLULAR ELIGIBILITY

Over 25 petitioners on reconsideration have urged the Commission to varying degrees to relax its restriction on cellular participation in PCS. The draconian nature of the Commission's cellular eligibility restriction is difficult to understand and impossible to justify. The Commission thus far has elected to effectively "freeze out" the wireless providers who are among those most able to develop, enhance and market PCS services rapidly and efficiently to American consumers. Bell Atlantic supports other petitions and comments that have similarly urged that there is no rational basis for the speculative "potential for unfair competition" that purportedly justifies the Commission's cellular exclusion,<sup>12/</sup> and that the negative consequences of barring rather than encouraging cellular company participation in PCS make little sense from a public interest standpoint.<sup>13/</sup>

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<sup>11/</sup> Specifically, Dr. Jackson and Professor Pickholtz show that from the standpoint of technical efficiency, while there is only a slight drop in operating efficiency in moving from 30 MHz allocations to 20 MHz license allocations (a desirable tradeoff that allows the creation of multiple PCS competitors), there is a substantial drop in the technical efficiency of 10 MHz allocations. Jackson/Pickholtz Report at 3. As Dr. Hausman observes, an allocation of six 20 MHz blocks is "considerably more likely to result in numerous strong competitors," as contrasted with the present scheme's likely outcome of "two very strong competitors and either 4 or 5 competitors who are in a significantly weaker competitive position." Hausman Affidavit at 12.

<sup>12/</sup> PCS Order at 45, ¶ 105. GTE correctly observes that many potential PCS entrants, "including companies like MCI, consortiums of cable companies, and ESMRs, will have both substantial available resources and their own unique advantages -- yet none of these companies is restricted in bidding in any way." Comments of GTE at 3. The Commission inexplicably has embraced a nonexistent "potential effect" on competition that it explicitly rejected in the cellular context as too speculative to support a bar on participation in a new service -- especially when "anticompetitive effects cannot be predicted with accuracy in advance but will become apparent, if at all, only upon implementation." Cellular Communications Systems, Report and Order, 86 F.C.C.2d 469, 484 (1981).

<sup>13/</sup> See Bell Atlantic Petition at 17; see, e.g., Comments of GTE Service Corp. (Dec. 30, 1993), at 2-4; Comments of McCaw Cellular Communications, Inc. (Jan. 3, 1994) at 4-18; Opposition of Nynex (Dec. 30, 1993), at 5-7; United States Telephone Association Opposition to Petition for Reconsideration (Dec. 30, 1993), at 5-6; see also Petition for Reconsideration and Clarification of McCaw Cellular Communications, Inc. (Dec. 8, 1993) at 2 ("The cellular eligibility restriction

All types of telecommunications entities -- LECs, cellular companies, interexchange carriers, cable companies, ESMR companies -- have unique resources, facilities and expertise that they can bring to PCS. There is no justification for assuming that cellular companies have any greater ability to affect PCS development if they behave anticompetitively than any other type of provider, and the Commission has regulatory safeguards and antitrust laws to police such behavior if it occurs. The Commission should put all such companies on an equal competitive footing in the PCS marketplace, and not arbitrarily exclude any type of provider from PCS in this nascent stage of service development.<sup>14/</sup>

Bell Atlantic also supports those parties who have joined in roundly criticizing MCI's attempts to limit competition by imposing even harsher eligibility restrictions on cellular carriers, *i.e.*, foreclosing the nine largest cellular carriers and their affiliates from bidding eligibility for one of the 30 MHz MTA blocks.<sup>15/</sup> Bell Atlantic has addressed MCI's self-serving and anticompetitive

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ignores the realities of the wireless marketplace, and is directly contrary to the public interest. The Commission has allocated sufficient spectrum to PCS, and created enough licensing opportunities, that any alleged risk of anticompetitive conduct -- which has not been established by the record -- will be adequately restrained by market forces."); Petition for Reconsideration of Nynex Corporation (Dec. 8, 1993), at 12 (observing that the very benefits that the Commission envisioned for PCS "could be substantially inhibited if LEC and cellular carrier participation are constrained by the eligibility restrictions proposed in the rules"); Petition for Partial Reconsideration of Radiofone (Dec. 8, 1993) (cellular restriction is arbitrary and capricious, lacks rational basis in the record, and constitutes unwarranted discrimination against cellular carriers).

<sup>14/</sup> Like Bell Atlantic, other parties have highlighted the inconsistent and unjustifiable position adopted in the PCS rules with respect to ESMR providers, who currently offer services largely substitutable with cellular, will have nationwide digital coverage, yet operate absolutely free from PCS regulatory constraints. *See* Bell Atlantic Petition for Reconsideration at 15 n.36; Petition for Reconsideration of BellSouth at 12; Partial Opposition to Petitions for Reconsideration and Comments of the Association of Independent Designated Entities at 21; Comments of McCaw at 12-13 nn. 24-25; Comments of Telephone and Data Systems, Inc. at 11; US West Petition for Expedited Partial Reconsideration and for Clarification at 16-20. Bell Atlantic agrees that cellular and ESMR providers should be treated identically under the PCS service rules, and specifically urges that no class of provider should be excluded from obtaining full PCS allocations in and out of their service regions.

<sup>15/</sup> *See, e.g.*, Opposition of McCaw Cellular Communications, Inc. (Jan. 3, 1994), at 19 (observing that "MCI and GCI in fact are merely seeking to gain an unwarranted competitive advantage by striving to exclude all entities that could provide effective competition to the national PCS

proposals both on reconsideration here and in the competitive bidding proceeding, and it is plain that MCI hardly needs the artificial insulation from competition in offering PCS to consumers that it seeks. Indeed, as one commentator has remarked, "the way things are going, some upstart will come along a decade from now and demand that MCI be broken up, as AT&T was a decade ago."<sup>16/</sup>

If the Commission unwisely chooses to preserve some type of cellular eligibility restriction, there are two minimal measures that it should adopt to mitigate the unduly harsh effects of the rule on both cellular-affiliated companies and designated entities.

First, the Commission should allow all companies to bid on all PCS licenses and then come into compliance with PCS cellular eligibility restrictions once PCS licenses have been acquired. As Bell Atlantic has urged in the competitive bidding proceeding, this will have the public interest benefit of maximizing competition and participation in the PCS auctions, and is fully consistent with Commission precedent. In addition, as GTE points out, allowing cellular carriers to come into compliance with PCS rules prior to initiating service will permit the orderly disposition of properties and avoid "fire sales."<sup>17/</sup> In this regard, Bell Atlantic recommends that the Commission adopt GTE's proposal to issue tax certificates to cellular carriers who divest of their cellular interests.<sup>18/</sup>

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network envisioned by both of these petitioners"); Opposition of Nynex (Dec. 30, 1993), at 7 (very factors which require rejection of MCI and GCI eligibility limitations "warrant the Commission eliminating all present restrictions on cellular carrier/LEC eligibility"); Opposition to Petition for Reconsideration of Sprint Corporation (Dec. 30, 1993), at 4 ("MCI's proposal to create a private reserve where it may acquire 30 MHz of PCS spectrum without competition from other major telecommunications companies must be rejected."); Comments of Telephone and Data Systems, Inc. (Dec. 30, 1993), at 12 ("It makes no sense to exclude cellular companies which have spearheaded the launch and expansion of cellular mobile services in the last decade . . . The gratuitous expansion of those restrictions as proposed by MCI and GCI is totally unjustified and should be rejected.").

<sup>16/</sup> Hubert Herring, Business Diary, "MCI Wants Its Private Highway," N.Y. Times, Jan. 9, 1994, at Section 3, 2.

<sup>17/</sup> See GTE Petition for Limited Reconsideration or Clarification at 5-8.

<sup>18/</sup> Id. at 8-11.



Second, the Commission should adopt Bell Atlantic's proposal to waive cellular eligibility rules to encourage the partnering of cellular-affiliated companies with designated entities.<sup>19/</sup> The present eligibility rules actively and unnecessarily diminish the opportunities for designated entities and small entrepreneurs to enter into consortiums with larger and more experienced telecommunications providers, many of whom are cellular affiliated. This effect contravenes the statutory goal of new section 309(j), which is aimed at maximizing opportunities for designated entities to "participate in the provision of spectrum-based services."<sup>20/</sup> The Commission should therefore at a minimum waive eligibility restrictions for consortiums that give designated entities significant equity participation.

### III. THE COMMISSION SHOULD MODIFY AND CLARIFY ITS CURRENT CELLULAR AND PCS ATTRIBUTION RULES

Other than MCI, the majority of commenters who addressed the issue agree that if the Commission insists upon maintaining its present flawed channel plan and/or restrictions on incumbent cellular operators, it should revise the ownership attribution standards for cellular operators applying for PCS licenses. The Commission's apparent adoption of different and utterly inconsistent ownership standards for determining when a PCS applicant has an attributable interest in a cellular company versus when a cellular company has an attributable interest in a PCS applicant makes no logical sense.<sup>21/</sup> Its only effect would be to limit drastically cellular and local exchange carrier

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<sup>19/</sup> See Comments of Bell Atlantic, PP Docket No. 93-253, at 16; Reply Comments of Bell Atlantic, PP Docket No. 93-253, at 23.

<sup>20/</sup> Section 309(j)(4)(D).

<sup>21/</sup> As explained in Bell Atlantic's reconsideration petition, in the first case, the Commission's new rules state clearly that a PCS applicant for a service region that overlaps with cellular service areas can have no more than a 20% interest in the in-market cellular carrier. In the second case, the Commission's rules are silent, but the PCS Order implies that an in-market cellular carrier can have no more than a 5% interest in the PCS applicant. See Bell Atlantic Petition for Reconsideration at 18-22; US West Petition for Expedited Partial Reconsideration and For Clarification at 26.

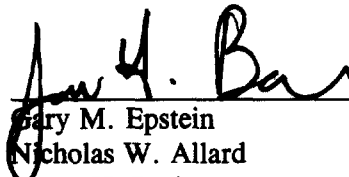
participation in PCS consortiums, both local and national, even at a less than 20% non-controlling level of ownership. This result is clearly not in the public interest.

The appropriate solution to the attribution question is for the Commission to reject both the 20% and 5% ownership levels in favor of an attribution standard of legal control.<sup>22/</sup> This will allow cellular companies and affiliated LECs the opportunity to participate in PCS through consortiums. If it does not do so, the Commission will severely limit the number of entities eligible to hold regional or nationwide PCS licenses, and will also restrict the opportunities for small businesses, minorities and other "designated entities" to become involved in PCS by strategically partnering with experienced telecommunications service providers.

Respectfully submitted,

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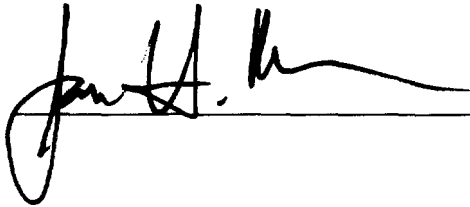
January 13, 1994

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<sup>22/</sup> See, e.g., Bell Atlantic Petition for Reconsideration at 18-22; Petition for Reconsideration of the Chickasaw Telephone Co., Cincinnati Bell Telephone Co., Illinois Consolidated Telephone Co., Millington Telephone Co., and Roseville Telephone Co. at 11-12; Petition for Reconsideration of Nynex at 13; Petition for Reconsideration of Pacific Telecom Cellular, Inc. at 2-5. At a minimum, the Commission should raise the level of the attribution standards to a consistent 30-35% for both cellular and PCS, as CTIA has suggested. See Petition for Reconsideration of the Cellular Telecommunications Industry Association at 22-23.

**CERTIFICATE OF SERVICE**

I, James H. Barker, hereby certify that copies of the foregoing Reply of Bell Atlantic Personal Communications, Inc. were served by U.S. mail, postage pre-paid on the 13th day of January, 1994 upon the representatives of the companies listed on the service list attached hereto.



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